



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/23/2332

Re: Property at 32A Lothian Street, Bonnyrigg, EH19 3AA (“the Property”)

Parties:

Mrs Barbara Lindsay, 37 Stoneybank Terrace, Musselburgh, EH21 6LZ (“the Applicant”)

Ms Sharyn Stewart, 32A Lothian Street, Bonnyrigg, EH19 3AA (“the Respondent”)

Tribunal Members:

George Clark (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Possession of the Property.

Background

1. By application, received by the Tribunal on 28 April 2023, the Applicant sought an Order for Possession of the Property under Section 33 of the Housing (Scotland) Act 1988 (“the 1988 Act”), namely recovery of possession on termination of a Short Assured Tenancy.
2. The application was accompanied by a copy of a Short Assured Tenancy Agreement between the Parties, commencing on 7 August 2017 and, if not brought to an end on 7 February 2018, continuing on a monthly basis thereafter until terminated by at least two months’ notice given by either party to the other party. The rent was stated to be £595 per month. The Applicants also supplied copies of an AT5 Notice dated 7 August 2017, and of a Notice given under Section 33 of the 1988 Act and a Notice to Quit, both dated 3 May 2023, and both requiring the Respondent to vacate the Property by 7

July 2023, with evidence of service of both Notices by Sheriff Officers on 5 May 2023.

3. On 14 August 2023, the Applicant confirmed in an email to her letting agents, that the title to the Property is in joint names with her ex-husband, Mr Neil Brown, and that in terms of a Minute of Agreement between them, a copy of which was provided to the Tribunal, she was responsible for the Property and for any profit or loss made on it.
4. On 17 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 7 November 2023. The Respondent did not make any written representations to the Tribunal.
5. On 10 November 2023, the Applicant's agents forwarded to the Tribunal a Personal Statement by the Applicant, in which she said that, due to increased mortgage costs and other costs of keeping the Property and to similar increases in costs of her interest-only mortgage over her main home, she required to sell the main home and move back into the Property. The monthly payments on her mortgage over the Property are £606.88, whilst the net rental income is £554.40 per month. She had also incurred additional costs for insurance, safety checks and boiler servicing and had required this year to replace the washing machine. She had also had to pay her share of the cost of a communal roof repair in 2022 and quotes for additional work were currently being obtained. The Respondent had also been in rent arrears of varying amounts since July 2023. It was no longer financially viable for the Applicant to continue to let the Property and she no longer wishes to be a landlord due to the financial burden and the work involved. She advised that she has now sold her main home and is living in temporary accommodation and paying for her belonging to be in storage. She provided confirmation from her mortgage lender of the monthly payments in respect of the Property.

Case Management Discussion

6. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 21 November 2023. The Applicant was represented by Mr Jonathan Dobbie of Saltouns Lettings, Edinburgh. The Respondent was not present or represented.
7. Mr Dobbie advised the Tribunal that, whilst rent arrears were not the reason for seeking an Order for Possession, they currently stand at £430. His understanding is that the Respondent is in employment and that she has no dependent children living with her. He also indicated that he understood that the Respondent has been in touch with Midlothian Council regarding being rehoused.

Reasons for Decision

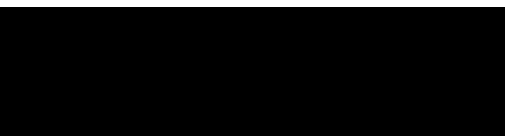
8. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including

making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

9. Section 33 of the 1988 Act states that the Tribunal may make an Order for Possession of a house let on a Short Assured Tenancy if it is satisfied that the Short Assured Tenancy has reached its end, that tacit relocation is not operating, that no further contractual tenancy is for the time being in existence, that the landlord has given to the tenant notice stating that he requires possession of the house, and that it is reasonable to make the Order for Possession.
10. The Tribunal was satisfied that the tenancy had reached its end, that, by service of the Notice to Quit, tacit relocation was not operating, that there was no further contractual tenancy in existence between the Parties and that the Notice required under Section 33 of the 1988 Act had been properly given. The remaining matter for the Tribunal to consider was, therefore, whether it would be reasonable to issue an Order for Possession.
11. The Tribunal considered carefully all the evidence before it and noted in particular the fact that the Applicant had demonstrated that the incoming rent was insufficient to meet her monthly mortgage payments and that she is currently in temporary accommodation. The Respondent did not make any representations to the Tribunal to indicate that it might not be reasonable, due to her personal circumstances, to grant the application. On the basis of the information before it, the Tribunal was satisfied that it was reasonable to make an Order for Possession.
12. The application is affected by The Cost of Living (Tenant Protection) (Scotland) Act 2022.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

21 November 2023
Date